86-302

Supreme Court, U.S.
FILED
AUG 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM 1986

LAVELL CHISUM,
Defandant, APPELLANT

and.

CHISUM INDUSTRIES, INC.,
and BEAVER LOG HOMES,
Defendants, APPELLANTS

VS.

LEROY RAVINE AND SANDRA
RAVINE,
Plaintiff, APPELLEES

ON APPEAL FROM THE
SUPREME COURT OF ALASKA

Jurisdictional Statement -
State Civil Case

Lavell Chisum, Pro Se
Rt 5 Box 267
Claremore Oklahoma 74017
918-341-0094

QUESTIONS PRESENTED

Did the State Court deny equal protection of the law to a non-resident, when the state statute of limitations for construction negligence claims was 6 years, by allowing service of process against Appellant more than seventy eight months after the act complained of?

Does the State Jurisdiction statute violate the First amendment prohibition against the loss of property, without the due process of law, by claiming in personam jurisdiction over Appellant who had not lived in the state for thirteen years prior to the service of summons, who had no privity of contract with Appellee, and communicated only by mail and telephone?

Does it shock the conscience of reasonable men for the Appellee to have their cake and eat it too, by claiming a home is worthless, yet nevertheless living

in it for a decade, still living in it, and having the Court order the replacement value paid in full with interest in the amount of $135,000?

Does the Alaska business statute, which allows the punishment of partnership liability, attach, when the putative partners deny any intention of a partnership relationship, no partnership papers were drawn or created, no partnership names or advertising was used, in order to find what they hoped was a deep pocket for the law suit, a violation of the Commerce clause of the constitution, which prohibits states from interfering with the free flow of commerce between states?

Does the Alaska Code of procedure which allows trials without notice of evidence or the production of documents violate the 14th Amendment guarantee of equal justice under the law?

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Citations to Opinions Below

The opinion of the Supreme Court of the State of Alaska is officially reported at (not available), and is annexed as Appendix A. The Order denying a rehearing was issued 19 May 1985 and is annexed as Appendix B. The opinion of the Superior Court for the State of Alaska Third Judicial District is not reported and is annexed as Appendix C.

Jurisdiction

This action for damages for faulty construction of a home draws into question the equal protection of the laws of the State of Alaska. Alaska Statutes Section 09.10.055 allowed six years to bring an action to recover damages for deficiency in the construction of improvements to real property. The Alaska Court did not apply this statute to the defendant, who lives in Oklahoma, thereby denying the equal protection of

non-resident and depriving appellant Lavell Chisum of his property without the due process of law. It is not due process if the statutes are not followed, or applied to everyone equally.

In denying Appellant's petition for rehearing, the Supreme Court Af the State of Alaska sustained an application of the Statute of Limitations of Alaska which allowed service of process more than six and a half years after the alleged breach of duty and negligent activity of Appellant. A notice of appeal was filed in the Supreme Court State of Alaska, the court possessed of the record, on 20 June 1986, which Notice is annexed as Appendix D. The jurisdiction of this Court is conferred by Title 28 United States Code Section 2104 to review the judgment of the State Supreme Court.

Constitutional Provisions Involved

United States Constitution, Amendment

XIV, as set forth in Appendix G.

Statutory Provisions Involved

Alaska Statutes Section 09.10.055 is set out in full in the Appendix H. In relevant part, the statute provides:

"(a) No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property . . . may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completions of an improvement. . . . "

Statement of the Case

In October, 1975, a log home was completed on Fish Hook Road, Palmer

Alaska. The home was built by Riem Construction Company, a proprietorship owned by Herbert Riem, a Defendant. Leroy and Sandra Ravine have lived in the log home for the past ten and a half years, through summer and winter, sunshine and storm.

In 1970, Lavell Chisum moved from Alaska to Oklahoma. Chisum had homesteaded in Alaska, built a log house by hand, and raised a family while there. In Oklahoma, he developed business interests in the auto body repair industry. In 1972, he also created a log mill, for cutting and trimming logs for use in constructing log buildings and homes. This mill, which was built by Chisum's brother, was operated by Susitna Mill and Log, Inc., and provided the cut logs for the Ravine home. Susitna was an Alaska corporation, in which Chisum owned 20 percent of the stock.

In 1974, the Ravines contacted Riem about constructing a log home on their scenic wilderness land. Riem wrote to Chisum for house plans to be used to obtain a loan, so that negotiations for the home construction contract could proceed. Chisum paid a home designer, Mr. John McAlexander, about $150.00 for plans, which Chisum planned to use again in future plans to promote the mills. Chisum had no contact with the Ravines. Chisum was not even paid by Riem, and no communication passed between Ravines and Chisum. Little did Chisum know that the plans were to make him personally liable for the Ravines home.

The Ravines applied for a home loan in March 1975, and construction began April 1975. In June 1975, Chisum Log Mill ordered a colorful brochure to promote the log homes and sent copies to Alaska after July 8, 1975. Copies were

given to the Ravines, and subsequently a copy was entered into the evidence in the trial. At the trial, the Ravines claimed reliance on these brochures, as their inducement to enter the contract.

The Ravines sued Chisum and served him on 19 October 1981. Nearly seven years had passed since he had passed on the drawings for their home. Evidence was lost and opportunities had passed. Two years later, in 1983, the Plaintiffs were to state in their trial brief that the home was shabby and dangerous. They wanted it paid for, in full, with interest, and wanted to keep it, as well. And so the judgment was granted. Ravines, you can have your cake and eat it too.

The Court denied the motions for retrial, and on appeal, the petition for rehearing. The passing of the Statute of Limitations was ignored, six and a half

years is not too long to sue someone. Misrepresentation of the evidence was of no consequence, either. Confuse the jury with a brochure that came out after the house was started, and claim that it was the basis for the contract. Base warranties on advertising. Charge anyone that furnished the supplies that the contractor could not assemble. Use "loan" plans prepared 4,000 miles from the building site as final drawings for the construction.

Chronology

In 1957 Herbert Riem and Lavell Chisum homesteaded near Mile 91-1/2 on the Anchorage-Fairbanks Highway. They were friends. Alaska was a Territory.

By 1960, Chisum built a log home on his homestead, and people from Anchorage visited Chisum and expressed their pleasure with his home. Partly as a result of this interest, Chisum proposed

a machine mill which would mass produce precut logs for construction of log homes. Alaska became a state.

By 1968, Chisum had reduced his idea for a mill to writing and sketches. Chisum began building the log mill but was unable to finish the project because of lack of money and parts. Riem offered Chisum about $13,000 in funds for the completion of the mill and a place for Chisum to work on the log mill.

In 1970, Chisum left Alaska and moved to Claremore, Oklahoma. The machine log mill was one fourth from being finished. Chisum mailed instructions to his brother, who finished the machine. Chisum and Riem each held ownership in the log mill, but all patent rights to the mill were retained by Chisum.

In 1972, the mill was completed. The mill would take raw, un-processed

logs, turn them, cut tongue and groove, cut notches on the ends, cut to the proper length, and square the logs. This requires two operators, one to feed the logs and the other to remove them.

In 1973 Chisum asked his accountant to incorporate Susitna Mill and Log. Chisum obtained a patent on the mill.

In 1974, Chisum registered a trademark called "Beaver Log Homes." Chisum planned to start a company to use the log mill, and to sell its products, which are the cut logs. Chisum had built a body frame repair machine which was patented and known as the "E-Z Liner." Chisum flew to Alaska with a marketing expert, Joe Moseley. They visited the construction site of a home, which was being built by Riem for his son. Chisum's son made pictures of the home for later use in a brochure prepared by Chisum. The brochure later became

very important in the Ravines Case. The log home was sold to Mr. Hanrath. Lavell Chisum received no proceeds from the sale of the home to Mr. Hanrath, as the project was owned solely by Riem Construction Company. Also in 1974, the Ravine's purchased a parcel of land and planned to have a permanent home custom-built on the property. At the trial, the Ravine's testified that "sometime in 1974 Chisum prepared a professionally done color picture display brochure which promoted and extolled the qualities of a Beaver Log Home." This testimony caught Chisum by surprise, as the brochure was not in existence until the summer of 1975. The Ravines contacted Jim Hitchcock d/b/a Caribou Cabin Company about a log home. Because the Hitchcock logs were flat on three sides and rounded on the outside only, the Ravines continued the search for a builder who

used tow-sided round logs, that are flat on the bottom and top, and round on the inside and outside. The search lead them to Susitna Mill & Log, where they met Riem. Ravines testified that Riem promoted the Beaver Log Home to the Ravines by giving them a brochure which he represented illustrated the qualities of a Beaver Log Home. Ravines testified that this brochure claimed that the Beaver Log Home concept had been pioneered and proven in Alaska, and that the Beaver Log Home was manufactured by Chisum Industries, Inc., located in Claremore Oklahoma. Ravines also read into the trial record the brochure's statement that:

"Susitna Mill & Log, Inc., will assist you in the design of your Beaver Log Home. And for a nominal fee will furnish all blue prints or drawings or you can work with the architect of your

choice."

It was this 1974 time when the Ravines later testified that the logs used in the Beaver brochure were produced in a mill designed by Chisum. This was pretty damaging stuff, as it turned out. Chisum objected at the trial but the evidence came in. There was no brochure, but Chisum had not the evidence to prove it. The evidence lay in a box 4,000 miles away. Though it was winter, Riem took the Ravines to view the Hanrath home, whose pictures were in the brochure, which the Ravines testified was prepared by Chisum and provided to Riem to hand to Ravine. The discussion of the brochure took up 3 pages of the Ravine's Appellee Brief of 30 November, 1984 (p.5-7) filed in the Supreme Court Of Alaska on appeal. It consumed a great deal of testimony. Ravines testified that they were impressed with the

brochure and the model home.

In 1975 the mill was operated by Susitna Mill & Log. It cut the logs used in the construction of log homes. By February 1975, the Ravines, who had previously gone to Hitchcock in Alaska for a set of drawings, received a set for their house. Riem advised the Ravines that Riem could not follow the plans and that Riem would send Hitchcock's plan to Chisum to have a new set of plans prepared by the architect for the Beaver Log Home. The Ravines testified they had no skill in construction and relied on the experience of Riem and his architect. Riem testified that he relied on Chisum's skill to prepare the plans for the construction of the home. This shows marvelous confidence since the lot was 4,000 miles away, and the plans were to be drawn with the property being sight unseen. Chisum was told that the plans

would only be used to apply for financing at the bank. Chisum never met the Ravines, nor corresponded with them. Chisum paid $149.50 to John McAlexander for drawings, and then placed the name of Beaver Log Homes trademark and address in the corner. The plan from McAlexander was used to acquire a $64,000 loan. Hitchcock, who had lost the business, later testified that the home built in 1975 was unsafe and should be torn down. The Ravines provided the testimony of three other experts on construction that the home was dangerously unsafe, and the plans were inadequate. In all of this Chisum contributed no effort, money, know-how or skill to the construction of the Ravines house. The Ravines never complained to Chisum, nor did they look to Chisum for relief when they found fault with the structure. The house was about 1,400 square feet in size. Riem

did not follow the McAlexander plans.

Continuing into March of 1975, Ravines and Riem Construction entered into an oral contract for the construction of the home. The loan was obtained and construction began in April of 1975. Riem thought it would be finished during the summer, and the Ravines lived on the site in tents, watching the construction of their home. The building was delayed. Meanwhile on June 23rd, 4,000 miles away in Claremore, Oklahoma, Chisum ordered 2,500 brochures to be printed by the Banknote Printing and Lithography Co. in Tulsa, Oklahoma, for $1,758.64. These were the brochures that the Ravines would testify to, some eight years later, as being the ones upon which they relied in making their purchase, and determing their approach to Riem. The brochures were shipped on 9 July 1975, from Tulsa to Willow, Alaska

for use by Susitna Mill & Log, Inc. Only after the trial was over, was Chisum able to search back through his records of eight years earlier, in order to find the invoice from Banknote, the Air Bill for shipment, and the evidence to show that it was physically impossible for the Ravines to have relied so extensively on the brochure, before they made the contract, and took out their loan. The brochure was not printed until after the house was half built. See (App. I)

In September 1975, after some problems, the home was completed and the Ravines moved in. Then the Ravines began to complain to Riem about the construction. Riem agreed on September 15, 1975, to some corrections, and sent the Ravines a letter dated 16 September 1975. A contract was signed on October 2, 1975. The Ravines paid the balance of the contract price to Riem. No thought

was given to Chisum, and no money either.

In November 1975, Chisum Industries, was incorporated, after the completion of the construction of the home.

In 1975 the Ravines lived in the house.

In 1976 the Ravines lived in the house.

In 1977 the Ravines lived in the house.

In 1978 the Ravines lived in the house, and sued Riem and others.

In 1979 the Ravines lived in the house. Defendants, Chisum Industries and Beaver Log Homes were dismissed from the case.

In 1980 the Ravines lived in the house.

In 1981 the Ravines lived in the house, and on 19 October sued Chisum.

In 1982 the Ravines lived in the house.

In 1983 the Ravines lived in the house, and had a trial and won. Chisum appealed, Chisum Industries and Beaver Log Homes are listed on the Order of Judgment.

In 1984 the Ravines lived in the house.

In 1985 the Ravines lived in the house.

In 1986 the Ravines lived in the house.

In 1983, at the trial, the Ravines claimed that Chisum and Riem were agents for each other, joined together in an informal partnership, based upon acts which stretched from 1957 to 1975. Based on the jury finding, Chisum was held jointly liable for a six figure judgment. Literally decades had passed. Memories had faded, as demonstrated by the Ravines

convenient, selective memory on their reliance on the brochure. They claimed they had the brochure, in hand, before the loan, contract and construction of the home. Ignoring the prejudice against Chisum, to have such evidence entered at the trial, after such a long delay in being sued, the Alaska court denied Chisum's appeal. The Ravines have their house and judgment, too.

The Questions Presented Are Substantial

Plaintiff sued Defendant Chisum six and a half years after Chisum provided some plans for the construction of a log home. A statute prohibited it, but the Court allowed the case to go ahead. There was no showing that Chisum had hidden from the jurisdiction of the State of Alaska.

The U.S. Constitution provides that the states shall guarantee the equal

protection of the laws to all citizens. By not enforcing its Statute of Limitations, the Alaska Supreme Court denied the equal protection of its laws to a resident of the State Of Oklahoma.

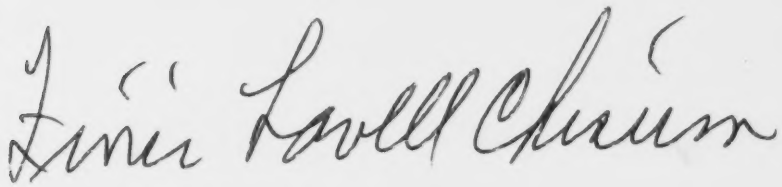
The failure to follow the laws has resulted in the litigation explosion which is causing a crisis of confidence among professionals and businessmen. If they can be sued years and decades later, with a risk of substantial exposure, when no one has been hurt, or worse yet, as in this case, where the Appellees have their cake and can eat it too, confidence in the fairness of the legal process is eroded to a level of disrespect.

Conclusion

This Court can correct the unfairness by ordering the lower Court to address the issue of the Statute of Limitations, and to justify the discrimination in its

application as between residents of Alaska and non-residents. The Court should either uphold the Limitation Statute for all citizens or for no one. Alternatively, this appeal should be accorded as a Petition for Certiorari.

Respectfully Submitted,



Finis Lavell Chisum, Pro Se

Route 5, Box 267

Claremore, Oklahoma 74017

918-341-0094

Appendix A - Memorandum Opinion and Judgment Supreme Court of Alaska 20 November 1985

Appendix B - Order of the Supreme Court Alaska Denying Rehearing 19 May 86

Appendix C - Amended Judgment Superior Court for Alaska Third Judicial District 7 May 84

Appendix D - Notice of Appeal filed June 1986

Appendix E - Supplemental Summons Served 19 October 1981

Appendix F - Affidavit of Finis Lavell Chisum 18 Jan 84

Appendix G - U.S. Constitution Amendment XIV

Appendix H - Alaska Statute 09.10.055

Appendix I - Brochure Invoice, Air Bill, 9 July 1975 Banknote Tulsa

Appendix J - Affidavit of Herbert Riem 13 April 1984

Appendix K - Appellant's Motion to Reconsider Supreme Court of Alaska 7 April 86

SERVICE BY MAIL

A copy of this pleading was mailed to Les Romo, Attorney for Appellee Ravine, 310 K Street, Suite 405, Anchorage, Alaska 99501

James Gorski, Attorney for Chisum Ind., Inc., Hughes Thorsness et al, 509 W. 3rd Avenue, Anchorage, Alaska 99501

David Lampen, Clerk of the Supreme Court, 303 K Street, Anchorage, Alaska 99501-2084

SERVICE BY EXPRESS MAIL

Clerk, Supreme Court of the United States, Washington, D.C. 20543

Dated: August 22, 1986

Respectfully Submitted,

Lavell Chisum

Lavell Chisum, Pro Se
Route 5 Box 267
Claremore, Oklahoma 74017
918-341-0094

A

THE SUPREME COURT OF THE STATE OF ALASKA

LAVELL CHISUM, d/b/a CHISUM INDUSTRIES, INC., d/b/a BEAVER LOG HOMES, Appellants, v. LEROY RAVINE AND SANDRA RAVINE, Appellees.	File No. S-478 MEMORANDUM OPINION AND JUDGMENT* (No. 269 - Nov 20 1985)

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Brian Shortell, Judge.

Appearances: Dan K. Coffey, Kay, Christie, Saville & Coffey, Anchorage, for Appellant. Rene J. Gonzales, Anchorage. for Appellees.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

In March 1975, Leroy and Sandra Ravine entered into an oral contract with Riem Construction for construction of a 2,400 square-foot log house. As built the Ravines' house had numerous problems.

* Entered pursuant to Appellate Rule 214.

All but one of the experts who inspected the house or the plans determined that the house is structurally unsound and that it cannot be made safe by repair.1

The problems with the house were apparently due to a number of factors. Riem acknowledged that his employees were inexperienced in log construction. One expert asserted that the use of cottonwood logs constituted a fundamental defect in the house. It is particularly significant that the experts at trial agreed the house plans were deficient, although there was testimony that the house as built deviated from the plans.

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1. Only one expert, an architect hired by Chisum Industries, thought the house could be repaired, but even he conceded that the plans used to construct the house were structurally defective.

The Ravines brought suit against Riem, Riem Construction, Susitna Mill & Log, Inc., and Chisum, individually and d/b/a Chisum Industries, Inc., d/b/a Beaver Log Homes. In its special verdicts the jury found all defendants negligent, and found that their negligence was a legal cause of the Ravines' damages. Additionally, the jury found that Riem was Chisum's agent, that Riem and Chisum were joint venturers, and that a partnership existed between defendants Riem and Chisum. Chisum thereafter moved for a new trial on the ground that the evidence was insufficient to support the jury's special verdicts, and for relief from judgment based on newly discovered evidence. These motions were denied.

In this appeal Chisum advances numerous specifications of error. Three specifications of error relate to the

superior court's failure to grant Chisum's motions for directed verdicts as to the Ravines' liability claims based on agency, joint venture, and partnership. We conclude that it is unnecessary to reach these separate specifications of error for the following reasons.

In Count II of their amended complaint the Ravines alleged in part:

> . . . [that Chisum owed them] a duty to design and construct said home in a manner which would provide plaintiffs with a safe, fit and habitable dwelling, which dwelling would comply with all applicable building codes and meet generally accepted standards in the industry.
>
> . . .
>
> That all defendants, jointly and severally, breached their duties in that they negligently designed and planned the plaintiff's home. Specifically, defendant negligently specified the use and installation of an interior log wall which fails to adequately support the building and negligently specified the use and installation of a roof which lacks a vapor barrier and fails to retain even a minimum of heat. The defective design has rendered the log home unsafe for human habitation.

The superior court instructed the jury that the Ravines claimed they were damaged through the negligence of Chisum and that in order to find for the Ravines on this particular theory of liability they had to find by a preponderance of the evidence (a) that Chisum was negligent, (b) that his negligence was a legal cause of the Ravines' harm, and (c) that the Ravines suffered damages.2 As to this theory of liability the jury returned special verdicts concluding in part that it was more likely than not that Chisum was negligent and that Chisum's negligence was a legal cause of

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2. The superior court also instructed the jury on the Ravines' other claims, which were based on breach of contract, breach of express warranty, and breach of implied warranties.

In its instructions on negligence the superior court adequately defined the concepts of negligence and proximate cause.

the Ravines' damages.3

Chisum did not appeal from the superior court's negligence instructions or any of the jury's special verdicts relating to the Ravines' negligence claim against Chisum. In our view the superior court's negligence instructions, the jury's special verdicts relating to the negligence claim, together with the more than adequate evidence supporting the jury's special verdicts relating to the negligence claim furnish an independent basis for upholding the judgment which was entered against Chisum.4

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3. In another special verdict the jury determined that the sum of $118,680.00 would reasonably and fairly compensate the Ravines for their damages resulting from the negligence of the defendants.

4. The evidentiary support for the individual negligence claim is that Chisum furnished construction plans for the Ravine's home which were defective; that Chisum furnished these plans upon the request of Riem after the latter had

Chisum also contends that the superior court erred in admitting into evidence house plans used by Riem in the construction of a log house prior to the construction of the Ravines' house. We hold that the superior court's admission of the evidence did not constitute an abuse of discretion. Under Alaska Rules of Evidence 401 and 403 the superior court could properly conclude that the

---

agreed to construct a log house for the Ravines; that Chisum knew the plans he provided Riem were going to be used in Alaska both to obtain financing and in the constructin of the Ravines' home; that expert testimony demonstrated the construction plans produced by Chisum were structurally defective in that these plans inadequately provided for climatic conditions in the Matanuska Valley and inadequately provided support for the weight of the house; that Robert J. Peters, an expert in structural engineering, testified that the house was unsafe and could not be fixed, and that even if the plans had been followed in every detail, the resulting structure would be unsafe.

Hanrath plans were relevant and that their probative value was not outweighed by the danger of unfair prejudice to Chisum.

Chisum's final specifications of error relate to the superior court's denial of his Civil Rule 60(b) motion for relief from judgment and for a new trial based on the grounds of newly discovered evidence.5 Although Chisum filed Rule 60(b) motions for relief from judgment rather than a Rule 59 motion for a new trial, we have stated that where the underlying ground is "new evidence" the

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5. Civil Rule 60(b) provides that the court may relieve a party from a judgment where there is "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) . . ."

Chisum's 60(b) motions related to the superior court's trial rulings concerning the Beaver Log Home Brochure and the Hanrath House Plans.

analysis is similar.6 Given the standards for the granting of a new trial on the basis of newly discovered evidence that we adopted in Montgomery Ward v. Thomas, 394 P.2d 774 (Alaska 1964) we conclude that the superior court was not clearly mistaken in denying Chisum's motions for relief from judgment and for a new trial.7

AFFIRMED.

---

6. Grothe v. Olafson, 659 P.2d 602, 610 (Alaska 1983).

7. In Montgomery Ward v. Thomas, 394 P.2d 774, 776 (Alaska 1964) we articulated the standard for granting a new trial on the basis of newly discovered evidence in the following manner:

> These requirements are that the evidence (1) must be such as would probably change the result on a new trial; (2) must have been discovered since the trial; (3) must be of such a nature that it could not have been discovered before trial by due diligence; (4) must be material; (5) must not be merely cumulative or impeaching.

B

IN THE SUPREME COURT OF THE STATE OF ALASKA

LAVELL CHISUM, d/b/a CHISUM INDUSTRIES, INC., d/b/a BEAVER LOG HOMES, Appellants, vs. LEROY RAVINE and SANDRA RAVINE, Appellees.	)	Supreme Court No. S-478 O R D E R

Superior Court No. 3AN 78-7159 Civil

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

On consideration of the motion to reconsider, filed on April 7, 1986, and treated by the court as a petition for rehearing,

IT IS ORDERED:

The petition for rehearing is denied.

Entered by direction of the court at Anchorage, Alaska on May 15, 1986.

CLERK OF THE SUPREME COURT

David A. Lampen
David A. Lampen

ccs: Justices
Counsel
John I. Choate, Esq.
Paul S. Wilcox, Esq.
Leslie D. Romo, Esq.
Mr. Lavell Chisum
Appeals Deputy Clerk, Anchorage
Trial Courts

C

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

LEROY RAVINE and SANDRA RAVINE,	)
Plaintiffs,	)
vs.	)
HERBERT RIEM; HERBERT RIEM d/b/a RIEM CONSTRUCTION COMPANY; SUSITNA MILL & LOG, INC.; LAVELL CHISUM, individually and d/b/a CHISUM INDUSTRIES, INC. d/b/a BEAVER LOG HOMES; and AMERICAN BONDING,	)
Defendants.	)

Case No. 3AN-78-7159 CIV

AMENDED
JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiffs Leroy and Sandra Ravine shall have a judgment against the Defendants Herbert Riem, Herbert Riem d/b/a Riem Construction Company, Susitna Mill & Log, Inc., and Lavell Chisum, individually and d/b/a

Chisum Industries, Inc. d/b/a Beaver Log Homes, jointly and severally, in the amount of $131,692.18, which sum represents the principal sum due plus costs and attorney's fees.

Post judgment interest shall accrue at the rate of 10.5% per annum from the date hereof.

DATED at Anchorage, Alaska this 7 day of May, 1984.

__Brian Shortell____
Brian Shortell
Judge of Superior Court

Approved/Disapproved as to form and content.

___James C. Merbs__5/3/84_
James C. Merbs

Approved/Disapproved as to form and content.

___Rene J. Gonzalez_____
Rene J. Gonzalez

D

IN THE SUPREME COURT OF THE STATE OF ALASKA

LAVELL CHISUM,
Defendant, APPELLANT

vs.

Supreme Court
No. S-478

CHISUM INDUSTRIES, INC.,
and BEAVER LOG HOMES,
Defendants, APPELLANTS

vs.

LEROY RAVINE and SANDRA RAVINE,
Plaintiff, APPELLEES

Notice of Appeal to the Supreme Court of the United States of America

Notice is hereby given tha Lavell Chisum, Appellant above named, hereby appeals to the Supreme Court of the United States at Washington, D.C., from the final order of May 19, 1986 denying the Petition for Rehearing, in the proceedings in Alaska Supreme Court No. S-478, and Alaska Superior Court No. 3AN 78-7159 Civil.

This appeal is taken pursuant to 28 USC 1257 dated:

Respectfully
submitted,

Lavell Chisum
Lavell Chisum, Pro Se
Route 5 Box 267
Claremore, OK 74017
918-341-0094

SERVICE BY MAIL

A copy of this pleading was mailed to Les Romo, Attorney for Appellee, 310 K Street, Suite 405, Anchorage, Alaska 99501
James Gorski, Attorney for Chisum Ind., Inc. Hughes Thorsness et al, 509 W. 3rd Avenue, Anchorage, AK 99501
David Lampen, Clerk of the Supreme Court, 303 K Street, Anchorage, AK 99501-2084
Clerk, Supreme Court of the United States, Washington, D.C. 20543

Dated:

Respectfully
submitted,

Lavell Chisum
Lavell Chisum, Pro Se
Route 5 Box 267
Claremore, OK 74017
918-341-0094

E

TRIAL COURTS FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

LEROY RAVINE and SANDRA RAVINE,	)
Plaintiff(s)	)
vs.	)
HERBERT RIEM; HERBERT RIEM d/b/a RIEM CONSTRUCTION CO.; SUSITNA MILL & LOG, INC.; LAVELL CHISUM, individually and d/b/a CHISUM INDUSTRIES, INC. d/b/a BEAVER LOG HOMES; and AMERICAN BONDING,	)
Defendant(s)	)

Case No. 3AN-78-7159 CIV

SUPPLEMENTAL SUMMONS

TO: LAVELL CHISUM, individually and d/b/a CHISUM INDUSTRIES, INC. d/b/a BEAVER LOG HOMES, Defendant.

YOU ARE HEREBY SUMMONED and required to serve upon the court at 303 K Street, Anchorage, Alaska and copy upon ARTUS & CHOQUETTE, P.C., Plaintiff's attorney, whose address is: 629 L Street, Suite

201, Anchorage, Alaska 99501, an answer to the first amended complaint which is herewith served upon you within 20* days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint.

XX This case has been assigned to Superior Court Judge Rowland.

This is a District Court case and will be assigned to an available judge.

Clerk of the Trial Courts

(COURT SEAL) By: _____
Deputy Clerk

DATED: October 8, 1981.

*If the State or an office or agency thereof is a defendant, the time to be inserted as to it is 40 days.

ASC-1 (1/81) (St. 3)

F

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

LEROY RAVINE and SANDRA RAVINE,

Plaintiffs,

vs.

HERBERT RIEM; HERBERT RIEM d/b/a RIEM CONSTRUCTION COMPANY; SUSITNA MILL & LOG, INC.; LAVELL CHISUM, individually and d/b/a CHISUM INDUSTRIES, INC. d/b/a BEAVER LOG HOMES; and AMERICAN BONDING,

Defendants.

Case No. 3AN-78-7159 CIV

AFFIDAVIT OF LAVELL CHISUM

STATE OF OKLAHOMA)
) ss.
County of Rogers)

I, LAVELL CHISUM, being first duly sworn upon oath, depose and state as follows:

1. I am a Defendant in the above caption action.

2. That during the trial of this matter, the court admitted into evidence, as Exhibit 4, a brochure produced by Chisum Industries, Inc. outlining Beaver Log Homes. I did not become aware that the Plaintiffs were going to assert their reliance on the Beaver Log Home brochure until very few days prior to trial when my attorney and I reviewed the Plaintiffs' trial brief.

3. The brochure, Exhibit 4, was not provided to me or to my counsel despite counsel's formal request for production.

4. I did not become aware that the Plaintiffs were going to raise the issue of the design of what is now known as the Hanrath house in relation to the design of the Plaintiffs' house until the fourth day of trial when the Plaintiffs sought to have admitted into evidence plans for the Hanrath house. The court admitted these plans, which were marked as Exhibit

13.

5. Upon becoming aware of the Plaintiffs' alleged reliance on the Beaver Log Home brochure, Exhibit 4, I immediately ordered my office in Oklahoma to begin a search for evidence which would demonstrate that these brochures could not have been in the Ravines' possession prior to the time that they entered into a contract with Herbert Riem for the construction of the house.

6. In this regard, I contacted Tina Harrison, an employee, during the course of the trial and instructed her to look for any evidence that would show when these brochures were printed and sent to Alaska.

7. The materials were not located where I thought they should have been located and Tina Harrison was unable to find them during the course of the trial.

8. After judgment was entered

against us on this matter, I again began searching for this information. We literally turned everything upside down in our office and still were unable to find any information, until I was able to track down a gentlemen by the name of Max Lewis, who is now living in Atlanta, Georgia.

9. Max Lewis had worked for me at the time that these brochures were printed. With the information he gave me, I was finally able to track down the documents which show when these brochures were printed and shipped to Alaska.

10. The invoices, statements, copy of the cancelled check and air freight bills from Banknote Printing & Lithograph Co. of Tulsa, Oklahoma referring to the Susitna Mill Brochure represent billings for the Beaver Log Home Brochure, produced as Plaintiffs' Exhibit 4 at trial, and accurately reflect the dates

this brochure was printed and sent to Alaska.

11. The Beaver Log Home Brochures, Exhibit 4, were not printed until June 23, 1975 and were not shipped to Alaska until July 9, 1975, some five months after the Ravines had entered into an agreement with Riem for the construction of their house.

12. I also have recently discovered evidence in the form of check stubs numbers 139, 232 and 233 showing that I did not draw plans for the Hanrath home, but paid Ed Kennen to draw the plans for this home.

13. This evidence could not have been discovered before trial since the Plaintiffs did not respond to my attorney's Request for Production. Because of the Plaintiffs' failure to respond, I did not become aware of the need for the evidence on the Beaver Log

Homes Brochure until just before the trial and the need for the evidence on the Hanrath house plans until the fourth day of trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

__Lavell_Chisum_____

Lavell Chisum

SUBSCRIBED AND SWORN to before me this 18th day of January, 1984.

__Tena_A._Harrison__
Notary Public in and
for Oklahoma
My commission
expires: 04/22/84

G

U.S. Constitution Amendment XIV Section One provides as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

H

Alaska Statutes Section 09.10.055 provides:

"(a) No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property; (2) for injury to property, real or personal, arising out of a deficiency; or (3) injury to the person or for wrongful death arising out of such deficiency may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completion of an improvement.

(b) Notwithstanding the provisions of (a) of this section, in the case of an injury to property or the person or an

injury causing wrongful death, which injury occurred during the sixth year after substantial completion, an action in tort to recover damages for the injury may be brought within two years after the date on which the injury occurred. In no event may action be brought more than eight years after the substantial completion of construction of an improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by a person in actual possession or control, as owner, tenant, or otherwise of an improvement at the time a deficiency in an improvement constitutes the proximate cause of the injury or death for which it is proposed

to bring an action.

(e) In this section, "person" means an individual, corporation, partnership, business trust, unincorporated organization, association, or joint-stock company."

Banknote

311 EAST SECOND / TULSA, OKLAHOMA 74120

INVOICE

№ 51285

SALESMAN	CUSTOMER ORDER NO.	DATE ORDERED	DATE SHIPPED	TERMS	INVOICE DATE	JOB NUMBER
McCoy		6-23-75	7-8-75	net	7-16-75	59874

Chisum Log Mill
Box 1145
Claremore, Oklahoma 74017

Same

DO NOT WRITE IN SPACE BELOW

QUANTITY	DESCRIPTION	PRICE	AMOUNT
~~2,500~~	~~Susitna Mill Log Brochure~~		~~1567.00~~
	Negitive Alterations		24.00
	Type & Repros		100.00
			~~1691.00~~
		tax.	67.64
			1758.64

BEST AVAILABLE COPY

Banknote

311 EAST SECOND / TULSA, OKLAHOMA

Chisum Log Mill
Box 1145
Claremore, OK

$ _____
AMOUNT PAID
PAY LAST AMOUNT IN BALANCE COLUMN

TEAR OFF AT PERFORATION AND MAIL TOP PORTION WITH REMITTANCE

	DATE	DESCRIPTION OR REFERENCE	CHARGES	✓	CREDITS	BALANCE	DR CR
1		BALANCE FORWARD				- 0 -	
2	7-16	Inv 51285	1758 64			1758 64	
3	7-29	Inv 51338	83 64			1842 28	
4							
5							
6							
7							
8		Paid check #614					
9		11-575					
10		$1842 28					
11							
12							
13							

BANKNOTE PRINTING & LITHOGRAPHING CO.
TULSA, OKLA.

Banknote

311 EAST SECOND / TULSA, OKLAHOMA 74120

INVOICE

Nº 51338

SALESMAN	CUSTOMER ORDER NO.	DATE ORDERED	DATE SHIPPED	TERMS	INVOICE DATE	JOB NUMBER
McCoy		6-23-75	7-9-75	net	7-24-75	59874

Chimum Log Mill
Box 1145
Claremore, OK 74017

Willow AL

Airborne Freight Corp

DO NOT WRITE IN SPACE BELOW

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	Air Freight to Alaska on Sustitna Mill Brochure		83.64
	See attached freight bill		

DATE SHIPPED	CHARGES	TARIFF DEST	DECLARED VALUE
07/09/75	PREPAID	ANC	

2157899

Airborne
AIRBORNE FREIGHT CORPORATION
PO BOX 62
SEATTLE, WASHINGTON 98111

SHIPPER AND CONSIGNEE

S BANKNOTE PRINTING
H 311 EAST 2ND TULSA OK 74120
C SUSITNA MILL & LOG INC
O WILLOW AL 99688

BILL TO

BANKNOTE PRINTING
311 EAST 2ND
TULSA OK 74120

ORIGINAL INVOICE

PLEASE RETURN DUPLICATE COPY WITH YOUR REMITTANCE.

PIECES	DESCRIPTION OF PIECES	WEIGHT	SCALE / COMM	RATE
	REF 29874			
2	PRINTED MATTER	130	G324	6049

REASON FOR "OTHER" CHARGES
A ASSEMBLY FEE
B DISTRIBUTION FEE
C SPECIAL SVC CHG
D SMALL PKG SVC
E OTHER (SEE DESCRIPTION AREA)

OK. aw

55

FREIGHT CHARGES	APC PICK UP	APC DELIVERY	EX VAL / INSUR	OTHER		
78.61	01/ 5.00				$ 83.64	2157899
ADVANCES ORIGIN	ADVANCES DEST	SURFACE FWD	COD FEE	C.O.D. →	PAY THIS AMOUNT	REFER TO THIS NUMBER WHEN REMITTING

NO OTHER INVOICE WILL BE RENDERED. TARIFF REGULATIONS REQUIRE PAYMENT WITHIN 15 DAYS.

RECEIVED BY	COMPANY	DATE	TIME
X TUL 0000726341191			

ESTABLISHED 1905

315

No 9739

BEST AVAILABLE COPY

J

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

LEROY RAVINE and SANDRA RAVINE,

Plaintiffs,

vs.

HERBERT RIEM; HERBERT RIEM d/b/a RIEM CONSTRUCTION COMPANY; SUSITNA MILL & LOG, INC.; LAVELL CHISUM, individually and d/b/a CHISUM INDUSTRIES, INC., d/b/a BEAVER LOG HOMES; and AMERICAN BONDING,

Defendants.

Case No. 3AN-78-7159 CIV

AFFIDAVIT OF HERBERT RIEM

STATE OF ALASKA)
) SS.
THIRD JUDICIAL DISTRICT)

HERBERT RIEM, being first duly sworn, deposes and states as follows:

1. I have previously testified to the matters in this affidavit at trial, but I am submitting this affidavit so that the Court can clearly understand the relationships between me, Lavell Chisum

and Susitna Mill & Log, Inc.

2. Lavell Chisum has never had any interest whatsoever in Riem Construction Company.

3. Lavell Chisum had nothing at all to do with the sale and construction of the Ravine's home.

4. The only connection Lavell Chisum ever had with the Ravines' home was to have the plans for the house prepared at my request.

5. Lavell Chisum was never paid anything for the plans for the Ravines' home or for anything else whatsoever in connection with the construction and design of the Ravines' home.

6. Susitna Mill & Log, Inc. had nothing to do with regard to the planning, sale or construction of the Ravines' home. All Susitna Mill & Log did was to supply logs and some lumber.

7. Riem Construction Company

planned the house with the Ravines and sold the logs which Riem Construction had bought from Susitna Mill & Log, Inc. to the Ravines in connection with the construction of the house. Riem Construction was general contractor on the job.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

HERBERT RIEM

SUBSCRIBED AND SWORN to before me this 13th day of April, 1984.

JUNE S. NEWMAN

Notary Public in and for Alaska

My commission expires: Commission Expires April 15, 1985

K

IN THE SUPREME COURT FOR THE STATE OF ALASKA

LAVELL CHISUM, et al.	)
	)
Appellants,	)
	)
vs.	)
	)
LEROY RAVINE and SANDRA RAVINE,	)
	)
Appellees.	)
	)
	)

Case No. S-478

ORDER GRANTING MOTION
TO APPEAR AND PARTICIPATE

JOHN I. CHOATE having moved to appear and participate in this matter and having complied with the requirements of Civil Rule 81, and good cause appearing therefore,

IT IS SO ORDERED.

DATED: May 9, 1986 .
Entered at Anchorage Alaska at the direction of an individual justice.

ALASKA SUPREME COURT

By: David A. Lampen
CLERK OF THE SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF ALASKA

LAVELL CHISUM, d/b/a CHISUM INDUSTRIES, INC., d/b/a BEAVER LOG HOMES,	)	
Appellants,	)	Supreme Court No. S-478
vs.	)	
LEROY RAVINE and SANDRA RAVINE,	)	O R D E R
Appellees.	)	

On consideration of the motion to appear pro se and for leave to file a late petition for rehearing, filed on April 7, 1986,

IT IS ORDERED:

1. The motion to allow the appellant to appear pro se is granted.

2. The motion to file a late petition for rehearing is granted. The clerk is directed to treat the document captioned a Motion to Reconsider as a petition for rehearing and to submit the

petition to the court for appropriate action.

Entered by direction of an individual justice at Anchorage Alaska on April 24, 1986.

CLERK OF THE SUPREME COURT

David A. Lampen
David A. Lampen

ccs: Justices
Counsel

The SUPREME COURT of the State of

ALASKA

LAVELL CHISUM ET AL,

APPELLANTS

v. File No. S-478, No.269-

Nov 20 1985

Leroy Ravine and Sandra Ravine,

Appellees

Motion To Reconsider Memo

This Motion To Reconsider is filed pursuant to Rules of Court to correct Mistakes of Law or Fact. The Opinion of 20 November 1985 approved a judgment wherein the Ravines received $118,680 as their full cost, plus interest, for the breach of a log home construction contract.

Mistake of Law

1. Ravines cannot keep the house and have it paid for in full. If Chisum is

to repay the Ravines their full costs for the log house, then their relief is in the nature of rescission of the contract and restitution of sums paid. Penalties are not available under contract, and no finding of bad faith or evil intent was made against Chisum. If Ravines remedy is rescission, then they should return the log home to Chisum. The log walls can be disassembled as they were assembled. Chisum's position at the trial was that the home was valuable, whereas the Ravines' claimed it was worthless. This Court should amend its Opinion to provide that Appellants should receive the home, if appellees receive the judgment.

Anything else should shock the conscience of reasonable men. Appellees cannot have a log home, live in it for a decade, and have it paid for in full, with interest.

The law of contract remedy was only half applied in this decision.

Mistake of Fact

2. The Statute of Limitations expired before Chisum was served. The jury found Chisum a Partner by estoppel even though Chisum had not lived in Alaska for 7 years before Ravines ordered the log home, the contractor Riem denied a partnership existed, Chisum was paid nothing from the proceeds paid by Ravine to Riem, and Ravine and Chisum had no oral and one written contact. The single contact was a set of preliminary plans drawn in Oklahoma and forwarded by Chisum to Riem, arriving prior to a loan application of May 8 1975. Chisum was served with Summons on 19 October 1981, well over six years later. The Court made a mistake of fact somewhere concerning the time frame, assuming the

Summons was within the six years. In fact, the Statute of Limitations had expired and Chisum should have been dismissed from the suit.

3. Ravines testimony of reliance on a brochure was erroneous and false. Without disclosure during discovery, at trial, and over Chisum's timely objection, Ravines testified that they relied on representations in an advertising brochure made by Chisum. Because of this unfair surprise, the evidence to show this was false was unavailable for trial. This claim mislead the jury and evidence is now available to refute the misinformation. A new trial should be ordered.

Summary

4. Appellants should receive the log home for the judgment.

5. Appellants should be dismissed from the suit.

6. Appellants should receive a new trial.

Further briefing of these points will be made upon request from the Court.

Date: 4 April 1986

Respectfully Submitted,

Lavell Chisum, Pro Se

Rt 5, Box 267

Claremore, Oklahoma 74017

918-341-0094

SERVICE BY MAIL

A copy of this pleading was mailed to Les Romo, 310 K Street, Ste 405, Anchorage, Alaska 99501.

Date: 4-7-86 Lavell Chisum

Lavell Chisum